

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 99-0042

SALES AND USE TAX

For Tax Periods: 1993-1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

Issues

1. Sales and Use Tax – Medical Equipment – Safe Needle Housings

Authority: IC 6-2.5-5-18(a), 45 IAC 2.2-5-28(h)

Taxpayer protests the assessment of tax on the sale of safe needle housings (syringe needle assemblies).

2. Sales and Use Tax – Medical Equipment – Batteries

Authority: IC 6-2.5-5-18(a), 45 IAC 2.2-5-28(h)

Taxpayer protests the assessment of tax on the sale of batteries used to provide power for infusion pumps.

3. Sales and Use Tax – Medical Equipment – IV Stand Rentals

Authority: IC 6-2.5-5-18(b), 45 IAC 2.2-5-29, 45 IAC 2.2-5-28(h)

Taxpayer protests the assessment of tax on the receipts from monthly and daily rentals of IV stands.

4. Sales and Use Tax – Medical Equipment – Urine Drainage Bags

Authority: IC 6-2.5-5-18(d)

Taxpayer protests the assessment of tax on the sale of urine drainage bags.

Statement of Facts

Taxpayer sells all drugs, supplies, and equipment necessary to administer various home infusion therapies to patients. The patient or caregiver uses the equipment and supplies to infuse the drugs, all at the patient's home. All drugs, supplies, and equipment are provided to the patient under a physician's prescription. All sales are made directly to the patient; no sales are made to doctors or other third parties. The therapies involved include long-term intravenous antibiotic, antiviral, pain management, or chemotherapy treatments, and enteral or parenteral nutrition programs.

Generally speaking, the State of Indiana imposes a state gross retail tax on retail transactions made in Indiana (IC 6-2.5-2-1). A retail transaction is generally defined as the transfer of tangible personal property for consideration (IC 6-2.5-4-1).

Taxpayer has assessments pursuant to an audit for tax years 1993-1995, inclusive. Taxpayer protests certain of these assessments, and a hearing was held. Further facts will be provided as necessary.

1. Sales and Use Tax – Medical Equipment – Safe Needle Housings

Discussion

Taxpayer's initial point of protest concerns the assessment of tax on the sale of safe needle housings. Safe needle housings (syringe needle assemblies) are safety mechanisms used as part of the delivery system to get medicine into the body. IC 6-2.5-5-18(a) states:

Sales of artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical equipment, supplies, and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.

45 IAC 2.2-5-28(h) states:

The term "medical equipment, supplies or devices", as used in this paragraph, are those items, the use of which is *directly required* to correct or alleviate injury to, malfunction of, or removal of a portion of the purchaser's body. (Emphasis added).

Even though the safe needle housings are prescribed by a physician, the housings do not meet the criteria of medical equipment, supplies, or devices under 45 IAC 2.2-5-28(h) because the safe needle housing is not *directly required* to correct or alleviate anything. The safe needle housings are indirectly used in administering the drugs to the

patient because the safety mechanism is not injecting the drug into the patient, but is used as a safety precaution for the safe use and disposal of needles. Thus, the sale of safe needle housings (syringe needle assemblies) is a taxable sale under IC 6-2.5-4-1 and IC 6-2.5-2-1.

Finding

Taxpayer's protest is denied.

2. Sales and Use Tax – Medical Equipment – Batteries

Discussion

Taxpayer's second point of protest concerns the assessment of tax on the sale of batteries used to provide power for infusion pumps. The sale of medical equipment, supplies, and devices are tax-exempt under IC 6-2.5-5-18(a). 45 IAC 2.2-5-28(h) requires that in order to be considered medical equipment, supplies, or devices, an item must be *directly required* in a treatment which corrects or alleviates an injury or malfunction to the patient. The batteries at issue are used for the same primary purposes. They are used in the infusion pumps to either allow patient mobility or provide an auxiliary power system for back-up to power exempt equipment.

Finding

Taxpayer's protest is sustained.

3. Sales and Use Tax – Medical Equipment – IV Stand Rentals

Discussion

Taxpayer's third point of protest concerns the assessment of tax on the receipts from monthly and daily rentals of IV stands. IC 6-2.5-5-18(b) states:

Rentals of medical equipment, supplies, and devices are exempt from the state gross retail tax, if the rentals are prescribed by a person licensed to issue the prescription.

See also 45 IAC 2.2-5-29.

45 IAC 2.2-5-28(h) requires that the IV stands be directly required to correct or alleviate the patient's injury or malfunction in order to be considered tax exempt medical equipment, supplies, or devices. The IV stands are used to deliver gravity-controlled disbursements of drugs, thus meeting the regulatory requirement. The daily and monthly rentals of IV stands are tax-exempt under IC 6-2.5-5-18(b).

Finding

Taxpayer's protest is sustained.

4. Sales and Use Tax – Medical Equipment – Urine Drainage Bags

Discussion

Taxpayer's final point of protest concerns the assessment of sales tax on the sale of urine drainage bags. IC 6-2.5-5-18(d) states:

Sales of colostomy bags, ileostomy bags, and the medical equipment, supplies, and devices used in conjunction with those bags are exempt from the state gross retail tax.

Since urine drainage bags are a type of ostomy bag, the sale of these bags is exempt under the statute.

Finding

Taxpayer's protest is sustained.

JS/PE/MR--002209